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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-436

FEDERAL COMMUNICATIONS COMMISSION,

Petitioner,

v.

MCI TELECOMMUNICATIONS CORPORATION, MICROWAVE COMMUNICATIONS, INC., and N-TRIPLE-C, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF AMICUS CURIAE OF THE STATE OF NEW JERSEY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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New Jersey and its Board of Public Utilities submits, as provided by Rule 42 of the Rules of this Court, the following brief amicus curiae in support of the Petition for Writ of Certiorari filed by the Federal Communications Commission, (FCC).

Interests of Amicus Curiae

The State of New Jersey and its Board of Public Utilities have a vital interest in the disposition of the petition for writ of certiorari now pending before this Court. The decision of the Court of Appeals, by setting aside the F.C.C.'s determination that specialized carriers are not authorized to provide ordinary long-distance telephone service, will have a direct and adverse affect upon New Jersey's regulatory policies and will endanger the continued availability of local telephone service at reasonable rates in the State of New Jersey.

Telecommunication service has been furnished in this country under a pervasive scheme of state and federal regulation on a non-competitive basis by AT&T, its operating telephone companies, and numerous other independent telephone companies operating in the individual states. Ordinary long-distance service has been provided since its initiation over the interstate switched network of AT&T, from originating and to destination points utilizing the facilities of the local telephone companies. Rate and revenue division policies have been developed and implemented under regulatory sanction with a view towards achieving the goal expressed by Congress in the Communications Act of 1934, namely, the availability of universal telephone service at affordable rates. 47 U.S.C. §151. The rate and revenue division policies developed and implemented by state and federal agencies have served to make long-distance service, even over little-used or "unprofitable" routes, generally affordable, and to permit the application of interstate long-distance revenues to defray the cost of rendering, and thus hold down the rates for, basic local exchange services, particularly basic residential service. Regulatory policies such as "rate averaging" and "jurisdictional separation" (fully described in the Motion

for Leave to File Brief Amicus Curiae submitted in this matter by the National Association of Regulatory Utility Commissioners), have become a basic premise of New Jersey's regulation of telephone rates and charges. The 7½ million citizens of New Jersey have for many years expected, and come to depend upon, the affordable, reliable telephone service made possible by the aforementioned rate-making policies.

The residential and business subscribers to telephone service in New Jersey generate an enormous volume of local and long-distance "MTS" (Message Toll Service) telephone traffic. In 1976, for example, well over 300 million interstate toll messages originated in New Jersey. Combined inter and intra state toll messages amounted in 1976 to about 1 billion. About 300 million calls (local and toll) per day were originated in New Jersey in 1976. These figures represent approximately double volume of such traffic generated only 10 years ago.

The greater increases in long-distance traffic have enabled state regulators to allocate a greater proportion of local plant costs to the interstate rate base of the regulated telephone companies and thus to maintain lower rates for essential local telephone service than would otherwise have been possible. Interstate toll revenues, contributing hundreds of millions of dollars annually to the operating telephone companies of New Jersey, have effectively supported lower local exchange service rates in New Jersey.

New Jersey and its Board of Public Utilities recognize the need to strike a balance between the advantages of regulated monopoly telecommunication service and the benefits to be obtained by competitive offerings. However, such balance must be struck by the federal and state agencies having primary jurisdiction in such matters. The

decision of the Court of Appeals permitting MCI, and other specialized common carriers, to offer ordinary long-distance telephone service, without the benefit of prior F.C.C. evaluation of the effect such offerings will have on existing carriers and traditional rate-making policies, will have a serious and adverse impact on the utility ratepayers of the State of New Jersey. The disposition of the Court of the now pending F.C.C. petition for certiorari will, therefore, significantly affect both the economic and social interest of New Jersey and its citizens. It will directly affect the ability of New Jersey, and its Board of Public Utilities, to meet their responsibility of insuring the continued availability to New Jerseyans of telephone service at affordable rates. The State of New Jersey and its Board of Public Utilities respectfully urge that this Court recognize the propriety of New Jersey's interest in this matter.

ARGUMENT

The State of New Jersey and its Board of Public Utilities, the latter being a member of the National Association of Regulatory Utility Commissioners (NARUC), does here and now adopt the statement heretofore filed by NARUC Amicus Curiae on September 27, 1977.

The State of New Jersey and its Board of Public Utilities adopt the reasons for granting the writ set forth in the petition of the F.C.C. and the Amicus brief of NARUC. The State of New Jersey and its Board of Public Utilities believe that the opinion below, by misconstruing the purpose and provisions of the Communications Act of 1934 will, if permitted to stand, create chaos in State and Federal regulation of telecommunications services and undermine existing rate structure applicable to such services.

CONCLUSION

For the foregoing reasons, the State of New Jersey and its Board of Public Utilities respectfully request that this Court grant the petition for writ of certiorari and summarily reverse the decision of the Court of Appeals.

Respectfully submitted,

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Attorney General of New Jersey
By CARLA VIVIAN BELLO
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Dated: October 21, 1977